

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

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|---------------------------|---|------------------|
| JAMES C. ROWE, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | CIVIL ACTION NO. |
| |) | 2:19cv107-MHT |
| |) | (WO) |
| UNITED STATES OF AMERICA, |) | |
| et al., |) | |
| |) | |
| Defendants. |) | |

OPINION

In response to a court order requiring them to file a new amended complaint or face dismissal, *pro se* plaintiffs Wyvonne C. Ware and Keith Rowe filed a proposed amended complaint asserting wrongful-death claims under the Federal Tort Claims Act stemming from the death of James C. Rowe, whom they also named as a plaintiff. This lawsuit is now before the court on the recommendation of the United States Magistrate Judge that plaintiffs' proposed amended complaint (Doc. 10) be construed as a motion to amend the complaint, that the motion be denied, and that the case be dismissed

without prejudice. There are no objections to the recommendation. After an independent and de novo review of the record, the court concludes that the magistrate judge's recommendation should be adopted to the extent that the case will be dismissed without prejudice. However, the court will take a slightly different route to the same destination.

As the United States Magistrate Judge ordered the plaintiffs to file an amended complaint, see Order (Doc. 6), but the proposed amended complaint arrived two days after the deadline, the court will treat the proposed amended complaint (Doc. 10) as a motion for leave to file the amended complaint out of time. The court will grant said motion because the envelope in which the proposed amended complaint was mailed to the court was postmarked two days before the deadline. See Amended Complaint (Doc. 10 at p.3). Finally, the court will dismiss the case without prejudice for failure to state a claim pursuant to 28 U.S.C.

§ 1915(e)(2)(B)(ii), for the following reasons. As the magistrate judge concluded, plaintiffs James C. Rowe and Wyvonne C. Ware are not proper plaintiffs in this action, and their claims accordingly must be dismissed. See Report and Recommendation (Doc. 12 at 7-11). Second, the remaining plaintiff, Keith Rowe, who brings his claims as the executor of James C. Rowe's estate, is pro se, and there is no indication that he is an attorney; however, a pro se individual cannot represent an estate in federal court. See Report and Recommendation (Doc. 12 at 9-10). Accordingly, the case must be dismissed.

An appropriate judgment will be entered.

DONE, this the 9th day of March, 2022.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE